

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRANK H. FINKEL, et al.,

Plaintiff(s),

-against-

S.I. ASSOCIATES CO., INC. and
NASSAU READY MIX,

Defendant(s).

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ORDER

CV 05-4656 (LDW)(WDW)

WALL, Magistrate Judge:

Before the court is the plaintiffs' motion for reconsideration of the January 24th order of the undersigned that held, in part, that the plaintiffs were precluded from using the testimony of individuals not previously identified in discovery in the upcoming summary judgment motions. See DE#34. The defendants oppose the motion.¹ For the reasons set forth herein, the motion for reconsideration is granted.

Although the plaintiffs could have handled the identification of the two witnesses - Kevin Hartery and Lawrence Arcese- more efficiently, upon reconsideration, the undersigned finds that having a complete record of the underlying facts on the motions for summary judgment takes priority, and the plaintiffs may use their testimony. The defendants, however, must have an opportunity to depose the two witnesses prior to the plaintiffs' use of their testimony. This will require a modification of Judge Wexler's briefing schedule. The undersigned, cannot, of course, modify that schedule and the parties are directed to contact Judge Wexler's chambers directly and

¹The defendants failed to file their opposition by ECF, and were apprised by the court that they must do so. Rather than defer a decision on this time sensitive motion until they have complied with the ECF requirement, the court has considered their faxed opposition, but the parties are advised that all communications with the court must be electronically filed. The court also notes that the defendants' opposition based on the argument that the motion for reconsideration is untimely is without merit. *See* Fed. R. Civ. P. 6(a).

request an extension. The depositions of the two witnesses shall be completed no later than

February 28, 2007. No fees or costs are awarded.

Dated: Central Islip, New York
February 12, 2007

SO ORDERED:

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge